



Commonwealth  
of Massachusetts

*OCPF Online*  
*www.mass.gov/ocpf*  
*Office of Campaign and Political Finance*  
*One Ashburton Place, Room 411*  
*Boston, MA 02108*

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Advisory Opinion

March 19, 2004  
AO-04-04

Paul W. Cote  
P.O. Box 516  
Amesbury, MA 01913

Re: PAC Contributions

Dear Mr. Cote:

This letter is in response to your request for an opinion regarding contributions to the American Bikers Acting to Educate PAC of Massachusetts (“ABATE PAC”).

“AMA New England Events” is an unincorporated business based in Amesbury operated by you and a partner, Kimberly Morris. The business hosts social events, such as a recent Valentine’s Day dinner dance, which are open to the general public. In planning the events, you wish to donate \$5 or \$10 per attendee towards the ABATE PAC. You have asked whether a “group event” donation may be made to the PAC without providing contributor information for each \$5 or \$10 contribution.

In addition, you would like to provide a discount to some elected officials and their guests and staff if they wish to attend one of your events, which you have stated are intended to be non-political. To this end, you have questioned whether the discounted price has resulted in a contribution to the official, and whether the contribution is subject to disclosure.

QUESTION

May AMA New England Events generally advertise that a portion of an event’s proceeds will be contributed to the ABATE PAC and then after the event make a “group event” contribution to the PAC without having to provide contributor information? If not, may the event be conducted in any other manner that is consistent with the campaign finance law?

ANSWER

No. AMA New England Events would be taking on the role of a political committee by soliciting or receiving funds from event attendees into its general business account that are understood to be political contributions. However, as discussed below, there are other ways that the business could support the ABATE PAC through its events.

DISCUSSION

As explained in OCPF's IB-88-01, an entity which solicits or receives any money or other things of value for political purposes is deemed to be functioning as a political committee and is therefore subject to the provisions of the campaign finance law as of the date of the solicitation or receipt of such money or other thing of value. An entity functioning as a political committee is subject to all limitations on contributions and expenditures, and all relevant reporting requirements, imposed by M.G.L. c. 55.

AMA New England Events would be acting as a political committee by receiving the proceeds of ticket sales to an event under circumstances where the attendees have the understanding that a portion of the admission price is to be contributed to a specific PAC. To avoid becoming subject to the campaign finance law, therefore, the business must not solicit or receive political contributions in conjunction with events in the manner you have described.

There are, however, other ways for AMA New England Events to raise money for the ABATE PAC that would be consistent with the campaign finance law:

- 1. In addition to the ticket price for the event, AMA New England Events can solicit separate contributions to be made payable directly to the PAC.*

First, there is nothing in the campaign finance law that would preclude AMA New England Events from including a separate PAC solicitation for Abate PAC on its event announcements. Contributions received from such a solicitation would be distinct from and in addition to the regular admission price and the recipients of the invitations should be instructed to make checks payable directly to the ABATE PAC. Contributions solicited in this manner could either be mailed directly to the PAC or could be forwarded to AMA New England Events with the ticket payments.

If AMA New England Events receives PAC contributions pursuant to a separate solicitation, it must forward each contribution to the PAC's treasurer in the form received (e.g., contributors checks) and, within three business days of the receipt of the contribution, provide records and detailed accounts of the contributions to the PAC's treasurer. See M.G.L. c. 55, § 23. The records that must be maintained by AMA New England Events and provided to the ABATE PAC include the name and residential address of all contributors, the date and amount of each contribution, and, where the amount received from any one contributor has exceeded \$200 during the calendar year, the occupation and employer of the contributor. See M.G.L. c. 55, §§ 2 & 10, and 970 CMR 1.10. Of course, as with all state or local PAC contributions, such

contributions must not exceed, in the aggregate, \$500 annually from any one individual, and must not be drawn on an account containing corporate funds. See M.G.L. c. 55, §§ 7A and 8.

Pursuant to M.G.L. c. 55, § 9, PAC contributions from any individual that exceed \$50, including any previous contributions made by that individual during the year, must be paid by personal check or other “written instrument.” A “written instrument” is “a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account [that] ... contains the contributor’s funds ... [or] for contributions by credit card, a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder.” The term “written instrument” does not include negotiable instruments that do not identify the true source of the funds provided, such as certified checks or money orders. See M.G.L. c. 55, § 9.

*2. You and your partner may, through AMA New England Events, contribute up to \$1,000 (\$500 each) to the PAC per year from the proceeds of your events.*

Another way to support the ABATE PAC through AMA New England Events would be for you and/or your partner to personally contribute a portion of the proceeds of an event to the PAC. This is permissible because a partnership’s contributions to a political committee are deemed to be from the individual partners. In fact, any contribution check drawn from AMA New England Events’ business account should indicate the amount that should be attributed to you and/or your partner. See 970 CMR 1.04(3).

The amount you could contribute in this manner could be up to \$500 per calendar year each, for a total of \$1,000. See M.G.L. c. 55, § 7A. This limit assumes that no other monetary or in-kind contributions from you or Ms. Morris have been made to the PAC since the first of the year.

If you decide to contribute this way, the event announcements should not reference the fact that money raised as the result of the event will be used to make a political contribution. This ensures that you and/or your partner, not the event attendees, are the true source of any resulting contribution. Compare AO-03-01 (a union may enact a bylaw pledging to make annual contributions to its PAC in an amount based generally on its number of members, but it should not automatically allocate or divert a set portion of the dues received from each member to the PAC).

*3. Finally, AMA New England Events may allocate a portion of an event admission price to the PAC as long as it (a) informs the contributor of the exact amount to be given to the PAC; (b) establishes a separate segregated transmittal account to receive the proceeds of the event and distributes the respective portions to the business and PAC; and (c) provides the PAC with the names and addresses of all contributors within three business days.*

Where the source, form and amounts are otherwise consistent with the campaign finance law, contributions to the ABATE PAC may be included in the admission price to an AMA New England Events event if you first establish a separate, segregated transmittal account to receive such payments and include a clear statement on the event announcements explaining that a

political contribution of a definite amount, which should also be set forth, to the ABATE PAC is being included in the admission price. From there, the proceeds of the ticket sales would have to be deposited in the transmittal account and the relevant amounts would be dispensed to the business and the PAC. As with the first option outlined above, AMA New England Events would have three business days to provide the PAC treasurer with the contributor information required to be collected and maintained pursuant to the campaign finance statute and regulations, including the regulations governing contributions by credit card, if applicable.

The easiest way for an individual to pay the admission charge to this type of event would be by personal check. If someone purchases multiple tickets, the PAC contributions should be attributed to the person who signed the check. In the event a check from a joint account is used, the contribution should be attributed to the person who signed the check, unless you receive contrary written instructions. See 970 CMR 1.04(1). As previously suggested, no corporate funds should be received into the transmittal account and cash contributions would only be acceptable where an individual's aggregate contributions to ABATE PAC do not exceed \$50 for the calendar year.

Credit card payments for an event that includes a PAC contribution in the admission price would only be appropriate if the PAC or AMA New England Events, as an agent of the PAC, contracted with a merchant bank or provider to have such payments deposited directly into the transmittal account. Such a contract must conform to the campaign finance regulations at 970 CMR 1.09 and M.G.L. c. 55, § 9 (the written instrument requirement). The contract must be consistent with the vendor's customary and usual business practices, and not provide any discount that is not available to other candidates or political committee or the general public. In addition, the committee, or, as discussed below, AMA New England Events on behalf of the committee, must be responsible for paying its portion of the fees required by the merchant provider or bank. See 970 CMR 1.09(2)(a)1-3.

Where a contribution is provided in a single payment along with a non-political remittance, the credit card fees and the costs involved in the creation and maintenance of the transmittal account may be split between the PAC and the business on a proportional basis. The ABATE PAC may pay directly for its share of the costs or AMA New England Events may make the payment on behalf of the PAC. Unreimbursed payments by the business would constitute an in-kind contribution from either you or your partner and would count towards your contribution limit to the PAC as discussed above. The amount of a contribution received by credit card to be reported by ABATE PAC is the gross amount of the PAC's share, as stated on the event announcement, even if the merchant bank deducts a transaction fee prior to depositing each payment in the transmittal account. Payments for all costs associated with this type of fundraising would be disclosed by the PAC as expenditures, or else as an in-kind contribution from your and/or your partner if AMA New England Events pays for the PAC's share of the fees.

#### QUESTION

May AMA New England Events provide discounted admission to public officials and their guests and staff?

ANSWER

The campaign finance law allows for public officials and others to receive complementary admission to *political fundraisers*. You should consult the Ethics Commission to determine the answer to this question to the extent the events sponsored by AMA New England Events are primarily, if not entirely, non-political.

This opinion is provided on the basis of representations in your letter, and is solely within the context of the campaign finance law.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan  
Director

MJS:bp